

MINUTES OF THE REGULAR CITY COUNCIL MEETING
TUESDAY- -NOVEMBER 1, 2011- -7:00 P.M.

Mayor Gilmore convened the meeting at 7:31 p.m. Councilmember Tam led the Pledge of Allegiance.

ROLL CALL - Present: Councilmembers Bonta, deHaan, Johnson, Tam and Mayor Gilmore – 5.

Absent: None.

AGENDA CHANGES

(11-518) Mayor Gilmore announced that the Resolution Proclaiming that Any Open Space Eventually Created from the Alameda Belt Line Property be Named the “Jean Sweeney Open Space Preserve” [paragraph number 11-519] would be addressed first and the Certificates of Appreciation [paragraph number 11-520] would be addressed on November 15, 2011.

REGULAR AGENDA ITEM

(11-519) Resolution No. 14631, “Proclaiming that Any Open Space Eventually Created from the Alameda Belt Line Property be Named the “Jean Sweeney Open Space Preserve” and Naming November 1, 2011 as Jean Sweeney Day in the City of Alameda.” Adopted.

Mayor Gilmore read the resolution.

Proponents: Michael John Torrey, Alameda; former Councilmember Lil Arnerich, Alameda (submitted correspondence); Norma Arnerich, Alameda; James Leach, Global Perspectives; Lorre Zuppan, Alameda Rotary; and Gretchen Lipow, Alameda (submitted drawing).

Councilmember Tam moved adoption of the resolution.

Vice Mayor Bonta seconded the motion, which carried by unanimous voice vote – 5.

Jim Sweeney expressed his appreciation.

PROCLAMATIONS, SPECIAL ORDERS OF THE DAY & ANNOUNCEMENTS

(11-520) Presentation of Certificates of Appreciation to the Mayor’s Fourth of July Parade Committee Members. Continued to November 15, 2011.

(11-521) Proclamation Declaring November 5, 2011 as Customer Appreciation Day in the Park Street Business District.

Mayor Gilmore read and presented the proclamation to Vicky Lapp, Bead Inspirations, and Kate Pryor, Tucker's Ice Cream.

(11-522) Public Utilities Board (PUB) Update on Alameda Municipal Power (AMP) Strategic Issues.

Greg Hamm, PUB President, gave a brief presentation.

The City Manager stated that he is impressed with AMP's and the PUB's flexibility and willingness to listen to public concerns.

Vice Mayor Bonta thanked the PUB for the outstanding work.

Mayor Gilmore stated that she has the utmost admiration for complexities involved in running a utility; thanked the PUB for steering AMP in a direction that the City can be proud of moving forward.

ORAL COMMUNICATIONS, NON-AGENDA

(11-523) Scott Mathieson, Alameda, discussed the School District budget and salaries.

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Councilmember Johnson left the dais at 8:09 p.m. and returned at 8:10 p.m.

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(11-524) Mary Anderson, Alameda, discussed the proposed golf land swap.

(11-525) Michael Harris, Alameda, discussed trees in the Park Street Business District.

Mayor Gilmore noted a meeting would be held on November 9, 2011.

(11-526) Joseph Cloren, Alameda, read and submitted comments and used his time as a moment of silence for Raymond Zack.

CONSENT CALENDAR

Mayor Gilmore announced that the minutes [paragraph no. 11-527] were removed from the Consent Calendar for discussion.

Councilmember deHaan moved approval of the remainder of the Consent Calendar.

Councilmember Tam seconded the motion, which carried by unanimous voice vote – 5, with the exception of the introduction of the Ordinance [paragraph no. 11-534], which Vice Mayor Bonta recused himself from voting on due to his children attending the preschool. [Items so enacted or adopted are indicated by an asterisk preceding the

paragraph number.]

(11-527) Minutes of the Regular City Council Meeting held on October 4, 2011 and the Special City Council Meetings held on October 11, 2011.

Carol Gottstein, Alameda, discussed the October 11, 2011 minutes.

The City Clerk stated the revised minutes provided reflect the changes Ms. Gottstein requested; Rosemary McNally's comments have been made part of the record and will be part of tonight's record because comments have been resubmitted tonight.

Councilmember deHaan stated Ms. McNally's information should be included in the report, if accurate and discarded otherwise; questioned whether Mr. Grijalva, FireChiefs.com.LLC, could provide feedback.

Vice Mayor Bonta stated the report is the report; the integrity of the report should remain the same; community views or perspectives that may shed additional light on the report could be added as part of the record; the report should not be amended.

Councilmember deHaan stated information was provided but not verified; that he would like to receive feedback regarding the report.

Councilmember Tam stated concerns and data presented by Ms. McNally would be made part of the record twice; Ms. Gottstein's comments have been reflected in the record; Councilmember deHaan is asking for something that is beyond the scope of the agenda item.

Councilmember deHaan stated the report has omissions or incorrect data and has been accepted.

Councilmember Tam stated the minutes reflect that the report was accepted; inquired whether the minutes are inaccurate, to which Councilmember deHaan responded in the negative.

The City Manager stated the issue is not agendized for discussion at this stage; reopening the content of the report is not appropriate; that he listened very closely to Ms. McNally's questions; he thought many of the questions were rhetorical; he specifically asked Mr. Grijalva what the impact might have been had Ms. McNally's data [on water temperature] been correct; he would retain Mr. Grijalva to do additional work if Council instructs him to readdress specific questions; he does not believe that is necessary; however, it would be Council's decision; reopening the report would require noticing.

Councilmember Tam moved approval of the minutes with Ms. Gottstein's revisions.

Councilmember Johnson seconded the motion, which carried by unanimous voice vote

– 5.

(*11-528) Ratified bills in the amount of \$2,236,355.23.

(*11-529) Recommendation to Accept the Annual Investment Report for Fiscal Year 2010-2011. Accepted.

(*11-530) Recommendation to Approve a One-Year Contract with ECS Imaging, Inc. in the Amount Not to Exceed \$32,859 for Laserfiche Services and Maintenance. Accepted.

(*11-531) Resolution No.14632, “Approving the Third Amended and Restated Northern California Power Agency Metered Subsystem Aggregator Agreement.” Adopted.

(*11-532) Resolution No. 14633, “Authorizing the City Manager to Submit an Application to the Metropolitan Transportation Commission for the Allocation of \$2.5 Million in Funding from the 2012 Regional Transportation Improvement Program for the Broadway/Jackson Project and to Execute All Necessary Documents.” Adopted.

(*11-533) Resolution No. 14634, “Approving Final Parcel Map No. 10006 (2601-2901 Harbor Bay Parkway.” Adopted.

(*11-534) Introduction of Ordinance Authorizing the Execution of Lease of Real Property Located at 1525 Bay Street Between City, as Lessor, and Karen Zimmerman and Kenneth Edgerly, as Lessee, for Operation of ABC Preschool. Introduced.

Note: Vice Mayor Bonta recused himself from voting on the item.

REGULAR AGENDA ITEMS

(11-535) Introduction of Ordinance Amending the City of Alameda Municipal Code by Repealing Section 24-5 (Smoking Control) of Section XXIV (Public Health) and By Adding Section 24-11, (Smoking Prohibitions in Places of Employment and Public Unenclosed Places), and Section 24-12 (Smoking Prohibitions in Multi-Use Housing). Introduced.

The Senior Management Analyst gave a Power Point presentation.

Councilmember Johnson moved approval of limiting public speaker comments to two minutes.

Councilmember Tam seconded the motion, which carried by unanimous voice vote – 5.

Proponents: Amanda Khoo, Youth Advisory Commission (YAC) (submitted comments); Danielle McGuinness, YAC; Carrie Huang, YAC (submitted comments); Jeanette Mei, Alameda; Amy Raffle, Alameda (submitted comments); Michael John Torrey, Alameda; Beth Hoch, Alameda; Gayle Thomas, Alameda; Joyce Carol, Alameda; Janice Louie,

Alameda County Public Health Department; Rosalyn Moya, Alameda; Nayeli Cerpas, Alameda; Zalman Sher, Alameda (submitted photo).

Urged revision to prohibit smoking in condominiums: Judith Fruge, Alameda (submitted comments); Michael Robles Wong, Alameda; Adrian Blakely, Alameda; Bruce Fiedler, Dublin (submitted comments); and Serena Chen, American Lung Association.

Urged revision to exclude e-cigarettes: Andrew Webre, Berkeley (submitted comments); Chris Gaskill, Alameda; and Geoffrey Braithwaite, Tasty Vapor.

Urged revision to allow smoking at bar patios: Joe Churchward, Alameda; Dan Nichols, Alameda; Samantha Beran, Alameda (submitted petition); Robb Ratto, Park Street Business Association (PSBA); Jon Spangler, Alameda; and Jake Thompson, Alameda.

Urged revision to allow smoking cannabis: Lauren Vasquez, Alameda.

Urged revision to allow smoking in rental units: Ron Salsig, Alameda.

Opponent: Lola Brown, Alameda.

Councilmember Johnson stated that she strongly encourages including condominiums; most condominiums are old and do not have good ventilation systems; second units and multi-unit structures should be included; questioned why the proposed ordinance would not apply to beaches; stated some type of exception should be given for outdoor seating in back areas of bars; requested further information on electronic cigarettes.

The Senior Management Analyst stated the Federal Drug Administration (FDA) regulates electronic cigarettes like tobacco; people use electronic cigarettes to try to stop smoking; various groups are recommending prohibition of electronic cigarettes.

Councilmember Johnson inquired whether people would not be able to use electronic cigarettes in apartments, to which the Senior Management Analyst responded in the affirmative.

Councilmember Johnson stated people should be able to use electronic cigarettes in apartments if it helps them quit smoking.

The Senior Management Analyst stated that the FDA has determined that electronic cigarettes should be regulated like tobacco.

Mayor Gilmore inquired how electronic cigarettes would be regulated in apartments if no one can smell or see anything.

The Senior Management Analyst responded electronic cigarettes have toxicity but are considered lower risk than smoking.

Councilmember Johnson inquired whether there is any evidence that electronic cigarettes permeate into other units.

The Assistant City Manager responded staff has relied on subject matter experts and model ordinances through the Technical Assistance Legal Center which is funded by the California Department of Health Services and other groups; staff is not as wedded to the [electronic cigarette] provision as other provisions; removing electronic cigarettes from the proposed ordinance would not receive a lot of argument.

The Acting City Attorney stated the issue is a policy call.

Councilmember Johnson suggested removing electronic cigarettes from the ordinance until more information is received.

Vice Mayor Bonta stated that he is looking at the ordinance from a public health prospective; more information is needed regarding impacts before a decision is made on electronic cigarettes.

The Assistant City Manager stated staff would do more research on the matter.

In response to Councilmember Johnson's initial comments, the Senior Management Analyst stated the second units were excluded to be consistent with individual property rights; the housing portion of the ordinance applies to rental complexes defined as multi-unit residences where 51% or more of the units are owned by the same landlord

Councilmember Johnson inquired whether other jurisdictions have applied similar bans, to which the Senior Management Analyst responded some have.

Councilmember Johnson inquired whether there have been lawsuits or challenges, to which the Senior Management Analyst responded in the negative.

Councilmember Johnson stated the same rules should apply if a second unit is rented out.

The Assistant City Manager stated that nothing would preclude an owner of a single family home with an in-law unit from making the in-law unit smoke free.

In response to Councilmember Johnson's inquiry regarding addressing beaches in the ordinance, the Senior Management Analyst stated that she did not do a lot of research regarding beaches because the East Bay Regional Park District (EBRPD) regulates the beaches.

Councilmember Johnson stated the City has agreements with EBRPD; agreements should be researched; the City owns the beaches.

The Assistant City Manager stated amendments could be brought back; Hirnosa Beach

just banned smoking.

Councilmember Johnson noted that she has never seen a police officer smoking on duty [as referenced by a speaker].

Mayor Gilmore questioned whether EBRPD has a smoking policy.

The Senior Management Analyst stated that she would look into the matter.

Councilmember deHaan stated there are beaches not under EBRPD

Mayor Gilmore stated Council is not trying to force people to quit smoking but is trying to protect the public health and non-smokers from second-hand smoke.

Councilmember deHaan stated drinking and smoking go together; that he is concerned with prohibiting smoking in tavern outdoor patio areas; the housing portion needs to be more precise.

Mayor Gilmore inquired how many taverns are in town, to which Mr. Ratto responded approximately 40 or 50.

The Senior Management Analyst stated Oakland does not have a prohibition for outdoor patio areas; twelve neighboring cities have smoke free outdoor dining provisions; ten neighboring cities have smoke free entryway provisions.

Mayor Gilmore stated a lot of back patio areas abut a street with just a fence separating the smoking patio from the sidewalk; rear patios are often surrounded by residences above the area; smoke drifts up and neighbors cannot open windows.

Councilmember Johnson stated the issue should be further explored; smokers would be given the impression that they are not welcome in taverns; something needs to be crafted that would have the least impact on people who are not smoking.

Mayor Gilmore stated bars and taverns are unique; that she is doubtful that an ordinance could be crafted that would fit all.

Brad Wick, South Shore Shopping District General Manager, stated tavern owners would take a direct hit; a lot of issues have been left on the table; suggested that the matter be tabled for further discussion; stated the Shopping Center would incur additional costs via signage and enforcement; the issue should be circulated within the business community.

Councilmember deHaan stated employees smoke outside establishments; that he does not like walking through smoke when patronizing the Shopping Center.

Mr. Wick stated that he has spoken to tenants regarding the matter; employees will not

walk 200 yards to a common smoking area; that he cannot enforce something that he does not have control over.

The Police Chief stated the ordinance would be complaint driven; that he has no desire to be proactive in citing people; the ordinance would be self policing; the Police Department would work with landlords, tenants, and business owners to help mediate issues; the Police Department prioritizes calls on a one to four scale; smoking violations would be a four.

Mayor Gilmore stated Police Officers would not come into an establishment looking for violations; complaints would come from residents, customers, and people affected by sidewalk smoke or smoke coming over a six-foot fence.

Vice Mayor Bonta inquired what the response would be if a Police Officer is on patrol and notices a smoking violation.

The Police Chief responded it would depend upon calls for service and how busy the Police Department is; stated that he would expect a Police Officer to request the cigarette be put out.

Councilmember Johnson stated the Police Chief stated Police Officers would try to mediate complaints; the Police Department might receive numerous complaints for a particular establishment; an ordinance should not be adopted that Council would not want the Police Department to enforce.

The Police Chief stated a lot of discretion would be used; a Police Officer would be assigned to work with bar owners and residents; the Police Department would not ignore a nuisance.

Councilmember Johnson stated the outdoor patio bar area needs further consideration.

Mayor Gilmore stated bar owners have been responsible and have worked well with the Police Department; the ordinance could be changed if things do not work out.

Vice Mayor Bonta concurred with Councilmember Johnson regarding further consideration for outdoor patio bar areas and electronic cigarettes; stated that he can envision having certain specifications for outdoor patio bar areas so that public health interests would be harmonized with business interests.

Mayor Gilmore stated each business is different; that she would be okay with having some type of opt out permit system; businesses would need to meet certain criteria.

The Assistant City Manager stated staff could bring back San Francisco's hybrid restriction for review.

Mayor Gilmore stated that she is not in favor of holding up the entire ordinance because

of one provision.

The Assistant City Manager suggested the [outdoor patio area] provision be brought back later, to which Mayor Gilmore concurred.

Mayor Gilmore summarized that Council wants the tavern issue and electronic cigarettes to come back to Council and to have condominium restrictions added.

Councilmember Tam stated that she is troubled by comments regarding businesses not being part of the process; she is supportive of including condominiums, reviewing beaches, providing an opt out permit system to deal with tavern patios, and allowing some flexibility for good business management through Police Department involvement.

Vice Mayor Bonta stated the ordinance should include existing condominiums; that he is not in favor of the 10% opt out for apartments; the public nuisance component should be included.

Mayor Gilmore stated Council could go forward with the ordinance tonight with changes to electronic cigarettes, condominiums, beaches, and an opt out for bars and taverns; the public nuisance issue and 10% opt out have not been discussed.

The Assistant City Manager inquired whether Council wants the non-smoking provision applied when condominiums turn over or straight across the board, to which Vice Mayor Bonta and Councilmember Johnson responded across the board.

Councilmember Johnson stated that she is surprised that business associations are not in attendance tonight; suggested seeking comments from the various business associations.

The City Manager stated staff would contact business associations tomorrow and remind them that there will be a second reading of the ordinance on November 15th.

The Assistant City Manager stated staff would not be able to address all issues discussed because of the twelve-day noticing period; however, condominiums can be included.

Mayor Gilmore inquired whether people are okay with putting in the public nuisance definition, to which Councilmember Johnson stated that she has no objection.

The Senior Management Analyst stated staff would need to review policy considerations; including the public nuisance definition would be difficult.

Mayor Gilmore stated the public nuisance definition could be brought back at a future date.

In response to the Assistant City Manager's inquiry, Council agreed to include public

events.

Councilmember Tam stated that she is comfortable with the Police Chief's statement that the Police Department would do everything possible to mediate violations.

The Assistant City Manager noted the ordinance is silent on medical marijuana.

Vice Mayor Bonta inquired whether a decision has been made on a single family home with an attached rental, to which Mayor Gilmore responded the issue should be left as proposed by staff.

Vice Mayor Bonta stated single family homes with attached rentals share walls.

The City Manager stated a person can chose or not chose to rent; that he takes responsibility for staff's viewpoint on ownership situations.

The Senior Management Analyst stated much of the language pertaining to common interest complexes has been drafted so that homeowner associations would have to take a proactive approach for a 100% smoke free unit; typically, the Covenants, Conditions, and Restrictions (CC&Rs) address the percentage for smoke free units.

The City Manager stated that he understands that Council wants to cover all condominiums and apartments; the issue at stake is what to do about the shared wall owner-occupied duplex; inconsistencies would exist unless everything is banned from smoking.

Mayor Gilmore stated the issue could go forward as written and could be tweaked down the line.

Councilmember Johnson stated that she is willing to go forward with the ordinance; the distinction would be if a homeowner decides to have a second unit with a shared wall.

Mayor Gilmore stated a homeowner could make the choice to smoke or not and a tenant could choose to rent or not.

The Assistant City Manager summarized direction as: take out provisions related to outdoor patios and electronic cigarettes; add existing condominiums across the board; review beaches and bring the matter back; study the public nuisance issue and provide more information at a future time; reject the 10% opt out for apartments; keep in the public events language; leave single family in-law units as is and address the matter in the future if necessary.

Vice Mayor Bonta moved introduction of the ordinance with amendments.

Councilmember deHaan seconded the motion.

Under discussion, Vice Mayor Bonta inquired how the 10% exception works for hotels.

The Senior Management Analyst responded smoking areas are placed at a certain location; stated hotels could choose to be 100% smoke free.

In response to Vice Mayor Bonta's inquiry, the Senior Management Analyst stated Belmont's ordinance has more to do with housing and outdoor air.

On the call for the question, the motion carried by unanimous voice vote – 5.

(11-536) Ordinance No. 3036, "Amending the Alameda Municipal Code by Adding Article VIII (Sunshine Ordinance) to Chapter II (Administration) Establishing Local Standards to Ensure Public Access to Public Meetings and Public Records." Finally passed.

Proponents: John Knox White, Alameda; and Jon Spangler, Alameda.

Mayor Gilmore stated having a redline document is very helpful.

The Acting City Attorney stated that she redlined the first reading of the ordinance because she wanted the public to see what the Sunshine Task Force presented to the Council versus what staff suggested as changes; changes from the first reading and second reading could be redlined if Council wishes; typically, ordinances are short and changes are not highlighted from the first and second reading.

In response to Mayor Gilmore's comments, the City Manager stated staff could provide redline changes to existing ordinances or redline staff's changes in what is introduced to Council.

Mayor Gilmore stated redlining would be good for long ordinances.

Vice Mayor Bonta stated redlining would be good if there are changes between the first and second reading; inquired whether there could have been a redline version that would have shown the changes.

The Acting City Attorney responded in the affirmative; highlighted the following changes: Section 2-91.5 matches the language of the ordinance with the new practice already in place for twelve day noticing for City Council meetings; Section 2-91.7 and 2-91.10 provide harmony between the ordinance and Brown Act; Section 2-91.7 changes the closed session title of Conference with Negotiator-Collective Bargaining to Conference with Labor Negotiators; Section 2-91.9 includes cost recovery for records duplication; Section 2-91.13 addresses end time for meetings; Section 2-92 includes electronic formatting language; Section 2-92.8 includes individual employees salaries as non-exempt information; Section 2-92.10 broadens what types of records must be immediately disclosed; Section 2-93.2 clarifies that complaints would be resolved at the Open Government Commission level and deletes references to appeals from the Open

Government Commission; Section 2-93.8 specifies that fines would go toward records retention technology and/or Sunshine Ordinance training and education.

Councilmember Tam moved final passage of the ordinance.

Councilmember Tam thanked everyone for all the hard work; stated underlying everything is the duty to provide information to the public.

Vice Mayor Bonta seconded the motion, which carried by unanimous voice vote – 5.

CITY MANAGER COMMUNICATIONS

(11-537) The City Manager announced the website survey ends November 16, 2011; urged everyone to email comments to him; a Park Street tree meeting would be held on November 9th; changes to future noticing and types of trees will be discussed; a golf website has been created and appraisals have been posted.

ORAL COMMUNICATIONS, NON-AGENDA

(11-538) John Knox White, Alameda, suggested Council form a public input policy.

(11-539) Robb Ratto, PSBA, stated that he and the tavern owners present would like to participate in any follow up on the smoking regulations.

(11-540) Jon Spangler, Alameda, discussed air filtration systems.

COUNCIL REFERRALS

None.

COUNCIL COMMUNICATIONS

(11-541) Councilmember deHaan stated the City should address water temperature distinction [in the Grijalva report]

Mayor Gilmore noted the Council couldn't take action under Council Communications.

(11-542) Councilmember deHaan stated the campaign reform ordinance should be brought to Council.

(11-543) Councilmember Tam requested an off agenda report on existing outreach policies to determine whether a Council Referral on the matter would be needed.

(11-544) Vice Mayor Bonta stated that he would host two Town Hall meetings regarding the golf course and land swap on Thursday, November 15, and Monday, November 28.

ADJOURNMENT

There being no further business, Mayor Gilmore adjourned the meeting at 11:12 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

The agenda for this meeting was posted in accordance with the Brown Act.